In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 393

CHRISTINE COLLINS, A. J. CUMMINS, YANCEY LEE CUMMINS AND EDWARD J. MILLER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

MEMORANDUM FOR THE RESPONDENT

This case arises out of the dismissal by the Price Administrator of a protest which petitioners filed with the Price Administrator on May 4, 1945, objecting to regulations establishing maximum prices for bulk and packaged liquors which had been superseded in 1943. A complaint which petitioners filed against the refusal by the Price Administrator to entertain this protest was dismissed by the Emergency Court of Appeals (R. 36).

It appears that petitioners' concern as to the legality of the superseded provisions arose out of

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two enforcement actions which had been instituted in the United States District Court for the Western District of Kentucky (R. 23). In one action, which involves sales of warehouse receipts for bulk whiskey, petitioners applied to the district court under Section 204 (e) (1) of the Emergency Price Control Act of 1942, as amended (herein termed "the Act"), for leave to file a complaint with the Emergency Court of Appeals setting forth objections to the validity of regulatory provisions which defendants were alleged to have violated. The district court granted this application and on June 2, 1945 petitioners filed a complaint with the Emergency Court of Appeals (Docket No. 231) setting forth objections to the regulatory provisions applicable to sales of bulk whiskey. In the other enforcement action, which involves maximum prices for both packaged liquors and bulk whiskey, it does not appear that application to file a complaint with the Emergency Court of Appeals has been made.

The petition suggests that the protest proceeding, from which the present case originated, was concerned only with the legality of maximum prices for transfers of bulk liquor by means of warehouse receipts, the issue which is now pending on the merits before the Emergency Court of Appeals. If this were so, a decision in the latter case would, we believe, render the instant proceeding moot. However, the protest filed with the Price Administrator also sought to raise cer-

tain questions as to the validity of the regulatory provisions applicable to packaged liquors—questions which are not available to petitioners in the proceeding now pending before the Emergency Court of Appeals. Consequently it does not now appear that the present case will become wholly moot.

The question presented by the petition is whether the Price Administrator is obliged to entertain a protest filed under Section 203 (a) of the Act which attacks a maximum price regulation which had been superseded prior to the filing of the protest. Substantially the same question was involved in the decision of the Emergency Court of Appeals in *Thomas Paper Stock Company, et al.*, v. *Bowles*, 148 F. (2d) 831. In the latter case this Court has granted a petition for a writ of certiorari (No. 67, present Term). Respondent believes that the court below correctly decided both the *Thomas Paper Stock* case and the present case. In view, however, of the granting of certiorari in the *Thomas Paper Stock* case respondent does not oppose the granting of the writ in the present case.

Respectfully submitted.

HAROLD JUDSON,
Acting Solicitor General.

SEPTEMBER 1945.

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